

REMARKS

Summary of the Response

Claims 31-87 are currently pending, with claims 31, 77 and 87 being in independent form.

Summary of the Official Action

In the instant Office Action, the Examiner provisionally rejected claims 31, 77 and 87 on the basis of obviousness-type double patenting over co-pending application No. 09/936,516. By the present remarks, Applicant requests reconsideration of the outstanding Office Action and allowance of the present application.

The Finality of the Instant Office Action is Improper

In the instant Final Office Action, the Examiner indicated in the Office Action Summary that all pending claims 31-87 were rejected. However, the Examiner only treated claims 31, 77 and 87 on the merits and failed to specifically indicate the status (i.e., rejected or allowed) of claims 32-76 and 78-86.

In particular, the Examiner only provisionally rejected claims 31, 77 and 87 on the basis of obviousness-type double patenting over co-pending application No. 09/936,516. On the other hand, claims 32-76 and 78-86 were not rejected or indicated to be allowable if

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presented in independent form. Accordingly, Applicant respectfully submits that the finality of the instant Office Action is improper and should be withdrawn, and further requests that the Examiner treat all of the claims on the merits and indicate the status of all pending claims in the next Office Action.

Advisory Action August 8, 2003

Applicant has considered the comments made by the Examiner in the Advisory Action of August 8, 2003. However, Applicant submits that the Examiner has improperly refused to consider the full merits of Applicant's response filed July 24, 2003.

In that response, Applicant pointed out that the finality was entirely improper. Applicant also pointed out why the claims of the instant application are not rendered obvious over the claims of co-pending application No. 09/936,516. Applicant additionally pointed out that the Examiner was required to allow at least one of the applications to issue. However, it is evident from the Advisory Action that these arguments were not fully considered.

Indeed, the Advisory Action fails to provide any support (other than bare allegations supported only by the Examiner's opinion) for the Examiner's assertion of obviousness. Nor does it set forth any motivation statement in support of the obviousness rejection. Additionally, the Advisory Action completely ignores Applicant's assertion that MPEP 822

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requires that the Examiner allow one of the co-pending applications to issue.

Finally, the Examiner noted that the Supplemental IDS filed July 24, 2003 would not be considered, but would be placed in the file. Although the Examiner has refused to indicate that the cited documents have been considered in the instant application, Applicant submits that these documents have been fully considered inasmuch as the cited documents were made of record in the co-pending application which is being applied in the obviousness-type double patenting rejection.

In this regard, Applicant notes that this IDS was filed for the convenience of the Examiner. Since the Examiner asserted that the co-pending application was relevant to the instant application (i.e., by applying the same in a provisional obviousness-type double patenting rejection), Applicant assumed that the Examiner might consider documents made of record in the applied co-pending application to be relevant to the instant application.

Accordingly, Applicant again requests that the Examiner consider and/or make these documents of record in the instant application. However, should the Examiner refuse to indicate that these documents are considered, Applicant requests that these documents be allowed to remain part of the record in the instant application.

Telephone Interview of August 15, 2003

Applicant's representative contacted Examiner Halpern and Primary Peter Chin to

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discuss the above-noted Advisory Action and the provisional obviousness-type double patent rejection of the instant application and co-pending application No. US 09/936,516. Specifically, it was pointed out that the applications claim distinct inventions as evidenced by comparing the independent claims of each case. It was also emphasized that the Examiner has failed to set forth a basis for the assertion that certain recited features are obvious and has set forth no evidence in support of this assertion. The Examiner responded by simply arguing that the claims are obvious over each other.

Applicant respectfully disagrees. Nevertheless, in an effort to advance prosecution of these applications, Applicant requested that the Examiner allow at least one of these applications to issue as required by MPEP 822. The Examiner agreed to allow US application No. 09/936,516 to issue. Moreover, the Examiner indicated that the obviousness-type double patenting rejection would be resolved in the instant application only by the filing of a Terminal Disclaimer.

The Double Patenting Rejection is moot

Applicant respectfully requests reconsideration of the provisional obviousness-type double patenting rejection of claims 31, 77 and 87 in view of the concurrent filing of a Terminal Disclaimer.

While Applicant disagrees that the instant claims 31, 77 and 87 recite features which

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are disclosed or suggested by claims 100, 33 and 99 of co-pending US patent application No. 09/936,516, this rejection is nevertheless rendered moot by the filing of a Terminal Disclaimer.

Accordingly, Applicant requests that the Examiner reconsider and withdraw the obviousness-type double patenting rejection.

Comments on Reasons for Allowance

In response to the Statement of Reasons for Allowance set forth in the Office Action, Applicant wishes to clarify the record with respect to the basis for the patentability of the indicated claims in the present application. In this regard, while Applicant does not disagree with the Examiner's indication that certain identified features are not disclosed by the references, Applicant submits that the claims in the present application recite a combination of features, and that the basis for patentability of these claims is based on the totality of the recited features.

CONCLUSION

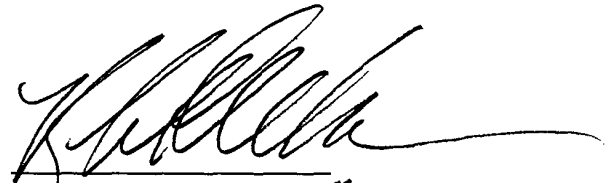
In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious Applicant's invention, as recited in each of the pending claims.

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Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

The Commissioner is hereby authorized to charge any additional fee necessary to have this paper entered to Deposit Account No. 19-0089.

Respectfully submitted,
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Enclosure: Terminal Disclaimer